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From: CN=Mary Grady/OU=DC/O=USEPA/C=US

Sent: Fri 10/19/2012 1:13:51 PM

Subject: Water Law News for October 19, 2012

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WATER LAW NEWS

OCTOBER 19, 2012

HIGHLIGHTS

Drilling

Gas Drilling in Pennsylvania, Impaired Health Linked

PHILADELPHIA—A survey of 108 people in 14 Pennsylvania counties where Marcellus Shale gas resources are being developed shows "a clear pattern of negative health impacts associated with living near gas facilities,"...

Drinking Water

Facilities That Treat Water Become

Regulated Water Systems, Official Says

LITTLE ROCK, Ark.—Any facility that adds permanent treatment to its drinking water becomes a water system subject to federal and state regulation, even if it receives the water from another system, a state official told a drinking water...

Drinking Water

U.S. Should Rethink Its Methods

For Disinfecting Water, Professor Says

LITTLE ROCK, Ark.—The United States should rethink the way it disinfects drinking water, giving more serious consideration to alternatives to chlorination such as ultraviolet light and ozone treatments, a professor of environmental engineering...

Enforcement

PHMSA Assesses \$425,000 Civil Penalty

Against Kinder Morgan Over New Jersey Spill

Kinder Morgan Liquids Terminals LLC has been assessed a civil penalty of \$425,000 for violations of pipeline regulations related to an October 2009 fuel oil spill, under a final order issued by the Pipeline and Hazardous Materials Safety Administration....

General Policy

Secretary Clinton Calls for Active U.S. Role

To Address Energy, Environmental Challenges

Secretary of State Hillary Clinton said Oct. 18 the United States should be actively involved in energy and environmental issues around the world to advance economic development and political stability....

Mining

Environmental Groups Sue to Block Mining

Permits Over Public Health Concerns

Environmental groups filed two complaints in federal district courts in West Virginia and Kentucky Oct. 17 seeking to block surface coal mining permits that they say ignored water quality and public health concerns (Ohio Valley Environmental...

Water Pollution

Nation's Engineers Urge Cities, Towns To Adopt Water Sustainability Practices

The nation's top engineering society recommended Oct. 18 that cities and towns adopt water sustainability practices in the absence of federal funding to improve the nation's aging drinking water and wastewater infrastructure....

Water Resources

Kansas, Nebraska Close Arguments to Court Over Remedies to Water Compact Violations

In a brief filed Oct. 15, Kansas completed its argument that the U.S. Supreme Court should order Nebraska to reduce groundwater pumping by specified amounts or provide an equivalent change in water supply to enforce an interstate compact (Kansas...

In Bid For EPA Rules, Environmentalists Target State Coal Ash Programs

Environmentalists are filing administrative complaints with state agencies over alleged groundwater contamination by utility coal ash ponds, a strategy that aims to force changes to state ash disposal rules and highlight alleged insufficient state regulation of ash in order to put pressure on EPA to issue a strict ash disposal rule.

Industry Urges Court To Deny EPA Deference In Chesapeake Bay Lawsuit

Industry groups are urging a federal court to overturn EPA's landmark watershed cleanup plan, known as a total maximum daily load (TMDL), for the Chesapeake Bay, charging that the agency is not entitled to legal deference because its practice of setting separate load limits for point and nonpoint sources exceeds powers granted by the Clean Water Act (CWA), according to a just-filed brief.

Latest Blogs

API Queries EPA Fracking Study Methods

The American Petroleum Institute (API) is reiterating criticism of EPA's draft report linking Wyoming groundwater contamination to hydraulic fracturing to raise questions about the methodology . . .

WATER:

Wondering if the local river is clean? There's an app for that

Annie Snider, E&E reporter

Published: Thursday, October 18, 2012

U.S. EPA today launched an app and website that allow people to find information about the condition of thousands of American lakes, rivers and streams from their smartphone, tablet or desktop computer.

The "How's My Waterway" app and website use GPS technology or a user-entered ZIP code or city name to draw on EPA's vast databases.

The app was released on the Clean Water Act's 40th anniversary to commemorate the role citizens play in protecting the nation's waters, an EPA statement said.

"Communities and neighborhoods across the U.S. want to know that their local lakes, rivers and streams are healthy and safe to enjoy with their families," said Nancy Stoner, acting assistant administrator for EPA's Office of Water. "This new app provides easy, user-friendly access to the health of a waterway, whether it is safe for swimming and fishing, and what is being done about any reported problems."

CLEAN WATER ACT:

Vetoes by Eisenhower, Nixon presaged today's partisan divide

Annie Snider, E&E reporter

Published: Thursday, October 18, 2012

As the Clean Water Act marks its 40th anniversary today, many environmentalists are wistfully recalling the law's bipartisan passage as a symbol of a long-lost period of unity around combating ecological problems.

Approved by Congress on the heels of the National Environmental Policy Act of 1969 and the Clean Air Act amendments of 1970,

the Clean Water Act received overwhelming support. But even then -- at the birth of the environmental movement -- politics that today surround the landmark law were beginning to emerge.

The Clean Water Act had its roots in a 1956 cruise down the Mississippi River by Minnesota Democrat John Blatnik, the chairman of the House Public Works Committee's Rivers and Harbors Subcommittee. While Blatnik was on the river to assess its locks, dams and levees, he was struck by the river's filth.

"The Mississippi was just a cesspool, and he came back to Washington determined to do something about this," said Jim Oberstar, the former 18-term Democratic congressman who served on Blatnik's staff from 1963 to 1974 before winning his retiring boss' seat.

Blatnik crafted the Federal Pollution Control Act of 1956 to provide research on the causes and treatment of pollution, funding for wastewater treatment plants, and a conference mechanism for states along major water bodies to agree on pollution limits and cleanups.

The bill was passed and signed into law by President Eisenhower, but as the Public Health Service began to dig into the wastewater treatment problems, the agency found they were more serious than first thought, Oberstar said. So, his boss drafted a new bill to strengthen federal enforcement powers, step up the construction of wastewater treatment facilities and boost research. The legislation passed the House and Senate, but Eisenhower issued a veto.

"Water pollution is a uniquely local blight," Eisenhower wrote in his veto message, hitting a theme that resounds today in the battle over where authority to combat water pollution should rest.

"Primary responsibility for solving the problem lies not with the Federal Government but rather must be assumed and exercised, as it has been, by State and local governments," Eisenhower wrote.

But when President Kennedy took office a year later, expanding the water pollution program was one of his first goals.

"Our nation has been blessed with a bountiful supply of water, but it is not a blessing we can regard with complacency," Kennedy said in a special message to Congress on natural resources a month after his inauguration. "To meet all needs -- domestic, agricultural, industrial, recreational -- we shall have to use and reuse the same water, maintaining quality as well as quantity. In many areas of the country we need new sources of supply, but in all areas we must protect the supplies we have."

Congress delivered a new version of Blatnik's bill to Kennedy's desk that July, and this time it was signed into law.

Burning river creates consensus

But with most water utilities doing only primary treatment on waste -- removing solids, but doing nothing to the chemicals -- before piping it into rivers, lakes and streams, pollution problems persisted.

Massive clouds of soap suds floated down the nation's waterways and sometimes out of people's faucets. The Potomac River flowed out of the nation's capital carrying the stench of the 240 million gallons of waste flushed into it each day. And Cleveland's Cuyahoga River oozed, brown and oily, bubbling with gases just below the surface.

Declaring the Cuyahoga one of the country's most polluted waterways, in 1970 Time reported one of Cleveland residents' favorite jokes: "Anyone who falls into the Cuyahoga does not drown. He decays."

On June 22, 1969, oil-soaked debris in the river caught fire, likely ignited by either a spark from a passing rail car or molten steel. The blaze lasted only two hours, but its image stuck with the American public.

"Public opinion was now racing ahead of the policymakers, and there was widespread support [for legislation] among Democrats and Republicans, not just in our Committee on Public Works, but in the whole House and Senate," Oberstar said.

Over the next year and a half, Congress held hearings and collected documentation about the technologies that could reduce pollution. The turning point, according to Oberstar, came when industry began to get behind national standards for pollution control.

"They were seeing evidence of businesses fleeing to states that had lower water quality standards, and industries that would find it difficult to move were unhappy about that," Oberstar said, pointing to 3M and the American Chemical Society as key supporters.

"They created a consensus in the business sector that national standards were in the broadest public interest, the broadest economic interest, and it was a major breakthrough in crafting the Clean Water Act."

House-Senate divide

Indeed, during those early years, the divides most evident today -- between Republicans and Democrats, business and environmentalists -- were not the ones at play in Congress, according to staffers from that era.

The House pushed for a program built on the same model as the Federal Aid Highway Program, in which the federal government collected revenue and set standards but let the states handle implementation.

"The House liked that model of a federally assisted program run by the states, whereas the Senate came from the point of view of command and control," said Mike Toohey, who served on the Republican staff of the House Public Works Committee's Water Resources Subcommittee when the last major amendments to the Clean Water Act were made in 1977.

The Senate's version of the legislation set specific deadlines for implementation, whereas the House's version offered more flexibility.

"You know that old saying that the Republicans in the House are the opposition but the Senate is the enemy? Well, that was the way we felt at the time in negotiating very heartfelt views on these issues of the bill," Oberstar said.

The bill remained in conference for 10 months, until a compromise was brokered at the beginning of October 1972.

Nixon's veto

But President Nixon, who was generally supportive of the bill's environmental aims, objected to its \$24 billion price tag. He had

hoped to issue a pocket veto, but Congress did not leave town as expected.

According to news reports from the time, Nixon waited until 40 minutes before the bill would have become law without his signature to issue his veto.

"Legislation which would continue our efforts to raise water quality, but which would do so through extreme and needless overspending, does not serve the public interest," Nixon said in a veto message that declared the bill "budget-wrecking." Just two hours after the president sent up his disapproval, the Senate voted 52-12 to override, with 17 of the votes in favor coming from Republicans.

"There are many, many federal programs that are wasteful, and many American tax dollars are idly spent on programs that do not produce commensurate results -- but that is not true of the federal pollution effort," said Sen. Howard Baker, a first-term Republican from Tennessee, during floor debate.

"I believe that the Federal Water Pollution Control Act Amendments of 1972 is far and away the most significant and promising piece of environmental legislation ever enacted by the Congress."

The House voted 247-23 to override -- a margin of more than 10-1 -- with 96 of the yays from Republicans and 151 from Democrats.

But Nixon didn't give up. He used his presidential powers to impound half the funds appropriated by Congress. The technique of impoundment -- which Nixon also used to withhold other federal funds, including highway money -- sparked a feud with Congress over who controlled the purse strings.

The dispute ultimately reached the Supreme Court, which in the 1975 case *Train v. City of New York* ruled that "the president had no authority to withhold funds provided by Congress in the Clean Water Act of 1972," and that "the president cannot frustrate the will of Congress by killing a program through impoundment."

What's next?

Today, as the Clean Water Act marks its 40th anniversary, the number of waters deemed suitable for fishing and swimming has doubled. But environmentalists say the country's waters face new challenges: toxic pollutants that cannot be seen or tasted but are dangerous to human health; pollution running off farm fields and suburban streets, called nonpoint sources, that is not regulated under the federal law; and potential changes brought about by a changing climate.

Meanwhile, the landmark law is at the center of a maelstrom in Congress over the proper role for federal regulation. A number of amendments have been introduced in the House this session to return control to the states or otherwise modify the law.

Against this backdrop, few environmentalists want to risk opening up the law for revisions.

But Toohey, the former House Republican staffer, said Congress just didn't know enough about many of the big water problems when it passed the bill.

"We could get and understand the point source pollution problem pretty well and figure out a strategy to get to a solution, and that worked," Toohey said. "Less well understood was nonpoint source pollution ... and at the time there was nothing about groundwater.

"I think on the 40th anniversary it would be entirely appropriate to ask the question, 'Where should this vision go now?'"

EPA:

Connaughton seen as early front-runner to head agency if Romney is elected

Jeremy P. Jacobs and Jean Chernick, E&E reporters

Published: Thursday, October 18, 2012

Republican presidential nominee Mitt Romney has cast U.S. EPA as a menace to energy jobs in campaign stops across the country, and with the race now a tossup, speculation is mounting over whom he might tap to lead the agency if he defeats President Obama next month.

The former Massachusetts governor made no bones about his support for oil, coal and natural gas at Tuesday night's debate, charging his opponent with allowing EPA to persecute producers of fossil fuels while avoiding any discussion of air quality.

"I was in coal country," he said, in response to a question on gas prices. "People grabbed my arms and said, 'Please save my job.'"

The head of the EPA said, 'You can't build a coal plant. ... It's virtually impossible given our regulations.' When the president ran for office, he said if you build a coal plant, you can go ahead, but you'll go bankrupt. That's not the right course for America."

The prominence Romney has given EPA on the campaign trail has aroused interest in who he would pick to replace Lisa Jackson as administrator.

A President-elect Romney would likely look for Cabinet members who have experience in the government as well as management credentials in the private sector, according to sources with knowledge of the Romney transition team's thinking. The top-level spots may be more political, while deputies will likely have lengthy resumes within the government or their respective industries. Kenneth Green, a scholar at the American Enterprise Institute, said any new president hopes for "plug and play" Cabinet members who are already familiar with Washington, and who have the connections to quickly assemble a capable staff. Add to that the ability to gain Senate confirmation and "that makes for a short list," he said.

So far, most of the discussion among EPA observers has focused on two names: James Connaughton, who led the White House Council on Environmental Quality during George W. Bush's administration, and Jeff Holmstead, Bush's EPA air chief.

"I think there is likely to be a very strong bias toward people with immediate and direct experience," said Mike McKenna, a Republican energy strategist. "That means a lot of names from the Bush administration are going to emerge."

Connaughton, now an executive at Baltimore-based Constellation Energy, appears to be the front-runner and is well-liked in most Republican circles. He has been advising the Romney campaign on environmental issues and is considered extremely qualified for the job. Those who have worked with him in the past characterized him as a wonk who is "head and shoulders above" many in the industry when it comes to environmental policy.

"He'd be a great pick," said Frank Maisano of the legal and lobbying firm Bracewell & Giuliani, and "he's a strong supporter of the Romney folks."

Connaughton declined to comment for this article.

He does, however, also have some baggage that could prove problematic in the confirmation process, particularly in satisfying the GOP's conservative tea party wing.

For example, Connaughton has defended his work to address climate change while at CEQ, which included efforts to facilitate the transfer of low-carbon technology between countries.

Green noted that Connaughton and his team were criticized by some conservatives for "being willing to go along with heavier-handed regulation than they had to."

Connaughton has also praised some aspects of Obama's approach to energy in the early days of the president's administration. "Overall, I am encouraged by the Obama administration's approach to energy policy," he said in an October 2009 interview with *National Review*. In particular, he agreed with EPA's stance that addressing climate change is best done through legislation, instead of regulation.

Since then, Democrats have failed in their push to pass a carbon dioxide cap-and-trade bill, and EPA has begun to promulgate greenhouse gas rules for high-emitting sectors beginning with power plants.

Connaughton has said he also favors a cap-and-trade system, noting that such a program has previously worked in reducing sulfur dioxide emissions that cause acid rain and nitrogen oxide emissions that cause smog. But he added that the legislation to create such a system should include cost consideration to assure policymakers the program won't get out of control (*E&ENews* PM, Nov. 16, 2011).

Such positions have already earned some criticism from climate change skeptics (*Greenwire*, May 22).

Additionally, Connaughton's current company has been vocal in its support of EPA's recent power plant air regulations, including its standards for mercury and other air toxics that Romney has criticized on the stump.

Romney has even endorsed Sen. James Inhofe's (R-Okla.) bid earlier this year to use the Congressional Review Act to kill the rule outright, something one longtime Washington observer said was an unusual move. Presidential candidates usually try to remain above the fray when it comes to these types of policy battles, the observer said.

McKenna said combining those elements could create hurdles for Connaughton.

"He'd have a lot of trouble getting confirmed," McKenna said, adding that Connaughton would be a "great" administrator. "He's been arguing for everything the Republican caucus hates."

"I think that the [Romney] campaign has been pretty upfront in saying what they really want is someone who can eliminate a lot of the regulatory burdens that the Obama administration has placed on people who want to build things," said the Washington observer, adding, "I don't see them going with someone like Christine Todd Whitman."

Whitman, Bush's first EPA administrator, was regarded as a moderate on climate and regulatory issues and has since criticized Republican use of anti-EPA rhetoric.

The apparent runner-up in the pre-election whisper polls is Holmstead, a Bush-era assistant EPA administrator for air and radiation.

Now a partner at Bracewell & Giuliani, Holmstead has represented coal-fired electric utilities and other industry clients that Romney has praised as job creators. He declined to comment for this article.

Other former Bush administration officials that have been mentioned include Ann Klee, a former EPA general counsel. Klee, who has since worked for General Electric Co., has also spent time at the Interior Department.

Observers also suggested that Rebecca Rosen, a current adviser to the Romney campaign on energy and environmental issues, will have a role either at EPA or in the White House. Some say she could be first in line for deputy assistant for energy and climate change, a post currently filled by Heather Zichal. Rosen formerly worked for Sen. Lisa Murkowski (R-Alaska) and has also worked at PFC Energy.

Poach from the states?

Some observers suggested Romney could turn to the states for an EPA chief, a move that would likely satisfy frequent critics of the agency and Washington bureaucracy.

Top contenders would include Kathleen Hartnett White, a former chairwoman of the Texas Commission on Environmental Quality. White is now director of the Armstrong Center for Energy and the Environment at the Texas Public Policy Foundation.

White has a long track record in Texas, including as an appointee to the Texas Water Development Board, and has been a frequent critic of EPA air regulations, including the Cross-State Air Pollution Rule (CSAPR) that Texas and other states successfully challenged in federal court.

Another option could be Joseph Kelliher, a Bush-era chairman of the Federal Energy Regulatory Commission who went on to Florida Power & Light Co.

The Washington observer also suggested that Romney could send a strong signal about the direction he wanted to take his EPA in by nominating Texas Attorney General Greg Abbott (R), who has mounted court challenges against several EPA rules,

including for ozone emissions.

But Bill Becker, executive director of the National Association of Clean Air Agencies, said there are some risks associated with picking an administrator that EPA's career staff will view as hostile to their work.

"If Mitt Romney were elected president, he might select an administrator who does not have a previous track record of suing EPA at every turn," Becker said, "or alienating the 10,000 staff who have worked at the agency for their entire careers."

Environmentalists and public health advocates are likely to find flaws in any Romney pick. Some even questioned why the job would be desirable.

"Would anyone," asked Frank O'Donnell of Clean Air Watch, "really want to head up EPA under Romney the way he has talked during this campaign?"

Democratic senators must assent

Besides wooing anti-regulatory Republicans, any Romney nominee must also get the nod from some Democratic senators in order to be confirmed, AEI's Green noted. And if Democrats wake up Nov. 7 to discover they have no prospect of moving environmental legislation in the new Congress, they will become that much more reluctant to approve a staunch opponent of environmental protection who might test the legal limits of deregulation, he said.

But Green said the tone of the campaign and a Romney victory might also persuade Senate Democrats that the American people are not nearly as interested in environmental safeguards as in economic development, encouraging them not to stage a huge fight over any EPA nominee.

"If he wins a significant victory running on a platform of saying 'I want oil, I want coal, I want natural gas, I want them now and I want them here,' and he doesn't discuss environmental protection or climate change, it's going to change the color by which his nominees are evaluated during confirmation, I would think," Green said.

Ultimately, Romney's pick may have little influence on EPA policy, argued Jerry Taylor of the libertarian Cato Institute. Taylor suggested that the White House typically sets the regulatory agenda and for all his bluster on EPA regulations, Romney would like to preside over a "status quo" EPA that "tackles issues that come down the pipe," since the agency was forced to issue most of its controversial regulations by court order.

"You can't roll those back unless Congress changes the law," Taylor said, referring to the mercury air standards.

Green sounded the same note. "Whoever's appointed administrator to the EPA comes in facing huge legislative and judicial constraints," he said. Rules are generally reviewed according to a certain schedule, with guidelines set by a panel of science experts. The administrator's discretion is limited.

"The law tends to drive the process," he said.

Which is why, Green said, Romney and his team might be showing some interest in a tax swap involving a carbon tax. EPA is on track to regulate carbon emissions from large sources anyway.

If a carbon tax is enacted, a future EPA administrator could decide that it satisfies EPA's obligations to limit carbon under the Clean Air Act.

"The carbon rules could be pulled back, but only in exchange for something else," Green said.

OFFSHORE DRILLING:

Hastings focuses moratorium probe on White House staffers

Emily Yehle, E&E reporter

Published: Thursday, October 18, 2012

House Natural Resources Chairman Doc Hastings has turned his sights on the White House in his panel's two-year probe into whether administration officials purposely altered a 2010 report that supported the offshore drilling moratorium.

The Washington Republican sent a letter yesterday to White House Chief of Staff Jacob Lew, requesting a transcribed interview with White House staffers Heather Zichal and Dan Utech. The request is the latest in the panel's investigation of the 2010 report, which claimed a panel of scientists supported a temporary moratorium when it did not.

At the time, Interior quickly fixed the mistake and sent apologies to the scientists. But Republicans on the Natural Resources Committee have accused officials of purposely rewording the report to buttress Interior Secretary Ken Salazar's drilling moratorium in the wake of the Gulf of Mexico oil spill.

"A number of unanswered questions remain about how the moratorium decision was made without any apparent technical justification and the circumstances surrounding the editing of the Drilling Moratorium Report by political appointees at the White House and the Department," Hastings wrote in his letter to Lew. "It is expected that current and former White House officials would be in a unique position, based on their involvement in the moratorium decision and developing and editing the Drilling Moratorium Report, to answer these questions."

The letter partly focuses on Interior's acting inspector general, whose office found no conclusive evidence that Interior officials intentionally doctored the 2010 report. But Republicans say acting IG Mary Kendall's impartiality was compromised because of her involvement in "policy-related" roles and her desire for a permanent spot at the agency.

Kendall strongly denied such accusations in a hearing earlier this year (Greenwire, Aug. 2). Now Hastings has asked the White House for several documents related to her office's investigation, including requests for interviews with White House officials and documents on Kendall's "suitability for the permanent Inspector General position."

Hastings also requested all documents that Zichal, Utech, former Obama environmental adviser Carol Browner and former White

House staffer Joe Aldy sent or received discussing edits to the 2010 report. He set a deadline of Oct. 26. Spokesmen for Interior and Kendall declined to comment on Hastings' letter. The White House did not immediately respond to a request for comment.

AGRICULTURE:

Chicken farmer accused of polluting Chesapeake Bay testifies in runoff case

Published: Thursday, October 18, 2012

The farmer at the center of a lawsuit with the potential to shake up the poultry business in the Chesapeake Bay area testified yesterday, saying he built the chicken houses in question when he was 19.

Alan Hudson, 37, and his wife, Kristin, were sued in 2010 by the Waterkeeper Alliance, which accused them of polluting the Chesapeake Bay with runoff from those chicken houses. Perdue Farms, the poultry firm that Hudson contracts for, was also named in the suit.

For farmers, the suit may threaten how they do business. And for environmentalists, the case could change the way agricultural businesses are held accountable for pollution (Greenwire, Oct. 10).

The defense attorneys are arguing the conservation group has no evidence that the pollution came from Hudson's chicken houses.

In his testimony, Hudson, whose family has owned the Berlin, Md., farm for at least a century, said the chicken houses were added to the farm after its dairy closed.

"That was going to be my contribution to getting my foot in the door farming with them," he said (Ian Duncan, Baltimore Sun, Oct. 18). -- JE

COAL ASH:

Pa. residents plea for federal help with pollution problems

Manuel Quinones, E&E reporter

Published: Thursday, October 18, 2012

SCHUYLKILL COUNTY, Pa. -- Parts of this mostly rural eastern Pennsylvania county can be called ground zero for coal mining's dirty legacy, before modern regulations were put in place.

Discolored streams polluted with acid mine drainage run through piles of waste coal, discarded decades ago as uneconomical. And open pits are filled with orange coal ash, the byproduct of combustion for electric generation.

It's also the center of a debate over how to best clean up the sins of the industry's past.

State regulators and coal industry leaders say burning coal from waste piles at nearby power plants and then using the ash to fill up abandoned strip mines is a win-win situation. With little government funding for reclamation, they call it a free-market way of cleaning the area while producing electricity.

Environmental activists and many residents, however, say the industry is colluding with regulators to sweep problems under the rug and make pollution worse. They don't understand what boosters call "beneficial reuse" of coal ash.

"I have been fighting fly ash for several years," said resident Anne Marie Shelby, who complained of constant coughing, poor air quality and dust around her home during a hearing in Pottsville last night. "We really need some protection here."

At issue at the hearing was the federal Office of Surface Mining's review of Pennsylvania's 2010 standards for reusing coal ash in mine reclamation. The Keystone State is a national leader on the issue.

While environmental advocates acknowledge the state has toughened its rules -- keeping ash away from the water table, for example -- they say monitoring standards still fall short (Greenwire, Oct. 1). And they want U.S. EPA and OSM to speed up their rulemaking for coal ash disposal and reuse in mines.

Robert Gadinski, an activist and former Pennsylvania Department of Environmental Protection geologist who is fighting ash dumping near his home, wants regulators to test residential wells before and after ash dumping, and he wants them to address possible carbon dioxide releases.

"Another thing that has been ignored is the radiation," said Gadinski, one of Pennsylvania's most vocal critics of ash dumping.

"This is not being tested in any of the sites."

Disease is another major concern. Gadinski wonders whether the ash is contributing to residents' getting sick with hemochromatosis, a condition generally caused by having too much iron in one's body. He calls it "rampant" in eastern Schuylkill County.

Scientists have also identified problems with polycythemia vera, a bone marrow disease. State and federal health officials have labeled the northeast Pennsylvania region a cancer cluster because of the problems.

The federal Agency for Toxic Substances and Disease Registry, in partnership with groups and universities, has for years been studying the problem in Schuylkill, Luzerne and Carbon counties.

"We have something going on in the tri-county area," said advocate Joseph Murphy, noting that the region is known for both "disease and dumping."

But so far, there is not enough evidence directly saying the ash is causing or contributing to the diseases. And support for ash reuse is widespread among the state's leadership.

In November 2011, DEP Secretary Michael Krancer sent a letter to Sen. Pat Toomey (R-Pa.) urging him to help stop EPA from

designating coal ash as hazardous.

"Put simply," he wrote, "EPA's designation of coal residue as hazardous would put an end to the use of coal residue for acid mine drainage projects and abandoned mine-reclamation projects."

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The groups say the Army Corps failed to do its homework before issuing Clean Water Act permits for James River Coal Co.'s Leeco Inc. Stacy Branch Mine in eastern Kentucky and Raven Crest Contracting LLC's Boone No. 5 mine in southern West Virginia.

The lawsuits were filed in U.S. District Court for the Southern District of West Virginia and U.S. District Court for the Eastern District of Kentucky, respectively.

Pam Maggard, a member of Kentuckians for the Commonwealth and a neighbor of the Stacy Branch mine, said in a statement, "This mine is going to ruin our neighborhood here in Sassafras.

"We have several people on my street who already have breathing problems and kids with asthma," she said. "Once again no one will be able to enjoy being outside on their porches and in their yards because of all the dust and mud."

The corps gave Leeco a permit in July to allow impacts to more than 3 miles of streams. Raven Crest will have a similar stream impact if its August permit stands, activists say.

The agency has defended its permits for mountaintop-removal mining as being the least environmentally damaging and within the law.

U.S. EPA had set up a system of enhanced review for dozens of projects, but Judge Reggie Walton for the U.S. District Court of the District of Columbia struck it down last year. The ruling is pending appeal.

Court battles are also ongoing for other permits. Earlier this year, Judge Robert Chambers of the U.S. District Court for the Southern District of West Virginia upheld a Army Corps permit for Alpha Natural Resources Inc.'s Reylas Surface Mine in Logan County, W.Va. Environmental groups have appealed the decision.

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During the month after Isaac, authorities gathered about 120,000 pounds more of tar mats, tar balls and other oil residue than had been discovered since the beginning of the year, authorities said.

In some cases, trying to resolve the new discoveries of tar residue has been hindered by the very processes that are in place to clean up the oil.

Local governments and residents must report found tar, and it must be tested before BP is called in to get rid of it.

This month, large tar mats were found at Bay La Mer and Comfort Island, but the oil has yet to be cleaned up.

"It's been 25 days and 13 days, and the oil is still out there on those two tar mats," said Drue Banta, an attorney with Gov. Bobby Jindal's (R) office. "This underscores the need for proactive long-term reconnaissance and removal of oil from our coast" (Jeff Adelson, New Orleans Times-Picayune, Oct. 17). -- HP

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But so far, there is not enough evidence directly saying the ash is causing or contributing to the diseases. And support for ash reuse is widespread among the state's leadership.

In November 2011, DEP Secretary Michael Krancer sent a letter to Sen. Pat Toomey (R-Pa.) urging him to help stop EPA from designating coal ash as hazardous.

"Put simply," he wrote, "EPA's designation of coal residue as hazardous would put an end to the use of coal residue for acid mine drainage projects and abandoned mine-reclamation projects."

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